

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

CHRISTOPHER MOEHL, MICHAEL )  
COLE, STEVE DARNELL, VALERIE )  
NAGER, JACK RAMEY, DANIEL )  
UMPA, and JANE RUH, on behalf of )  
themselves and all others similarly situated, )

Plaintiffs, )

v. )

THE NATIONAL ASSOCIATION OF )  
REALTORS, REALOGY HOLDINGS )  
CORP., HOMESERVICES OF AMERICA, )  
INC., BHH AFFILIATES, LLC, HSF )  
AFFILIATES, LLC, THE LONG & )  
FOSTER COMPANIES, INC., )  
RE/MAX LLC, and KELLER )  
WILLIAMS REALTY, INC., )

Defendants. )

Case No: 1:19-cv-01610

Judge Andrea Wood

**JOINT STATUS REPORT**

Pursuant to the Court's Order (Docket No. 228), Plaintiffs Christopher Moehrl, Michael Cole, Steve Darnell, Valerie Nager, Jack Ramey, Daniel Umpa, and Jane Ruh, on behalf of themselves and all others similarly situated ("Plaintiffs"), and Defendants The National Association of Realtors®, Realogy Holdings Corp., HomeServices of America, Inc., BHH Affiliates, LLC, The Long & Foster Companies, Inc., RE/MAX LLC, and Keller Williams Realty, Inc. ("Defendants"), (collectively, the "Parties"), respectfully submit this Joint Status Report setting forth the current status of discovery.

No status conference is currently on the calendar; Plaintiffs believe that a brief telephonic status conference in May to discuss the status of discovery and any outstanding issues (including the dispute regarding production of *Sitzer* expert materials, described below) before the upcoming discovery deadlines, would be helpful. Defendants would be pleased to participate in a status conference if the Court would find it useful.

## **I. UPCOMING DISCOVERY DEADLINES**

May 14, 2021, is the deadline for Defendants to “complete their production of transactional data responsive to Plaintiffs’ first set of requests for production.” Docket No. 196. The Parties expect to meet these deadlines with certain exceptions. As the parties previously informed the Court, pursuant to the discovery agreement discussed in Section II, the HomeServices defendants (HSDs) are not producing any transactional data from the HomeServices subsidiaries covered by their pending motion to strike, unless and until that motion is denied. Plaintiffs have also agreed to extend the data production deadline to June 15 for data from First Weber, one of the HomeServices subsidiaries, and plan to submit a stipulation and proposed order to this effect shortly.

June 15, 2021, is the deadline for the Parties to “complete their productions of documents responsive to other parties’ request for production.” Docket No. 196. Again, as the parties previously informed the Court and pursuant to the discovery agreement discussed in Section II, the HSDs are not producing documents from the HomeServices subsidiaries covered by their pending motion to strike, unless and until that motion is denied. Separately, the Corporate Defendants object to producing any documents in the possession of their franchisees until the franchisee discovery motion is resolved.

The Parties are not aware of any other reason why they will not be able to meet the current case schedule.

## **II. PENDING MOTIONS**

On January 12, 2021, Plaintiffs and the HSDs completed briefing on the HSDs’ motion to strike certain class allegations. *See* Docket Nos. 206, 208, 210. As the parties advised the Court during the January 19, 2021 status conference, the HSDs have objected to producing documents and transactional data from certain subsidiaries pending resolution of the HSDs’ motion to strike. And, as the HSDs advised the Court, the parties agreed that in the event that the Court denies the HSDs’ motion to strike, the HSDs will designate an agreed-upon number of additional custodians and will produce reasonably accessible transactional data from these subsidiaries.

On February 10, 2021, Plaintiffs and the Corporate Defendants completed briefing on the Corporate Defendants’ motion for a protective order regarding franchisee discovery. *See* Docket Nos. 217, 221. The Court heard argument on the motion on February 24, 2021.

Plaintiff Valerie Nager has moved to withdraw as a class representative and sought a protective order precluding NAR’s efforts to obtain deposition and written discovery from Ms. Nager. NAR has asked to condition Ms. Nager’s withdrawal as a class representative on a deposition and document production. Plaintiffs and NAR submitted a joint memorandum setting forth their positions on March 11, 2021. *See* Docket No. 231.

## **III. THE LEEDER CASE**

As noted in a previous status report, on January 25, 2021, a complaint was filed in *Leeder v. NAR, et al.*, Case No. 1:21-cv-00430 (N.D. Ill.). The *Leeder* plaintiff seeks to represent a class of residential home buyers, whereas the plaintiffs in the instant action seek to represent a class of

residential home sellers. The *Leeder* case is currently assigned to Judge Pacold. Defendants understand that the plaintiff in *Leeder* has taken the position that *Leeder* is related to this action, and that the *Leeder* plaintiff may file a motion to transfer that case to this Court, though the *Leeder* plaintiff has not yet done so.

On April 20, 2021, Defendants filed a motion to dismiss the *Leeder* complaint. *See Leeder v. NAR, et al.*, Case No. 1:21-cv-00430 (N.D. Ill.), Docket No. 61. Among other things, the motion contends that the *Leeder* proposed class of home buyers lacks standing to sue for damages under the Sherman Act because they are indirect purchasers.

#### IV. REMAINING DISCOVERY ISSUES

Plaintiffs served a document request on Defendants seeking “All expert reports, testimony, and reliance materials in the *Sitzer* action.” In the parties’ discussions, the HSDs have stated that they object to producing *Sitzer* expert materials in response to this request and the parties have reached an impasse. The other Defendants have so far indicated that they intend to oppose this request as well. Plaintiffs propose conferring with the other Defendants before April 30, 2021, regarding their objections and that the Parties will file a joint submission on this issue, not to exceed three pages per side, by May 12, 2021.

The Defendants do not agree that this issue is ripe for resolution by the Court. All Defendants would likely be affected by the Court’s ruling on this issue. Yet Plaintiffs have so far conferred only with the HSDs. Defendants submit that it would be more efficient for the Parties and the Court if this issue were presented to the Court after all Parties have conferred on the issue. Defendants therefore propose that Plaintiffs promptly confer with all Defendants on both the merits of this issue and, if necessary, on a schedule for presenting any dispute between the Parties to the Court for resolution.

Various Parties continue to confer on additional discovery issues, including the scope of certain document requests. If, after further conferring, the Parties are unable to resolve these discovery issues, they will raise them with the Court when they become ripe for submission.

Dated: April 26, 2021

Respectfully submitted,

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